

**UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

Bautech USA, Inc.,

Case No. 0:23-cv-60703-CMA

Plaintiff,

v.

Resolve Equipment, Inc.; Resolve Marine
Group, Inc.; Olsen Associates, Inc.;
Skyrise Engineering & Testing, LLC; and
Federal Insurance Company,

Defendants.

Resolve Equipment, Inc.,

Third-Party Plaintiff/
Third-Party Defendant,

v.

Pennsylvania National
Mutual Casualty Insurance
Company,

Third-Party Defendant/
Third-Party Plaintiff.

NOTICE OF DISCOVERY DISPUTE

Third-Party Plaintiff/Third-Party Defendant, Resolve Equipment, Inc. (“Resolve Equipment”) pursuant to Section II-C of the Court’s Discovery Procedures Order hereby files a Notice of Discovery Dispute against Third-Party Defendant/Third-Party Plaintiff, Pennsylvania National Mutual Casualty Insurance Company (“Penn National”) describing the nature of the parties’ discovery dispute, the discovery deadline, the parties’ efforts made to confer, the parties’ dates of availability, and the amount of time needed for hearing:

Nature of Discovery Dispute

There are four issues of dispute between Resolve Equipment and Penn National:

1. Penn National, along with Plaintiff Bautech, improperly issued a claw back notice regarding a deposition exhibit (Ex: 109), which is an email between three non-attorney employees for Beacon Consulting Group, Inc., Bautech, and Penn National. The correspondence was sent after the completion of the project, and does not concern litigation or litigation strategy. Exhibit 109 was used in December 2023 at the deposition of Sergio Pahl, Bautech's President. Neither Penn National nor Bautech objected to the exhibit.
2. Penn National is improperly withholding many communications from Beacon Consulting Group, Inc.—a third party which was involved with the subject project and visited Bautech's plant before the performance and payment bonds were issued by Penn National for Bautech in 2021. Beacon also was involved in the negotiation of the terms to restarting the project, after it was shut down in September 2021, with Broward County in 2021 and 2022, and served as project manager in 2023 pursuant to Resolve and Penn's takeover agreement.
3. Penn National is also improperly withholding many communications from Wiss, Janney, Elstner Associates, Inc.—a third party engineering company who participated on the project in both 2021 and 2023 and whom is serving as Penn's testifying expert in this case.
4. Penn National, as of the filing of this Notice, has also failed to produce a privilege log specifying which specific Beacon and Wiss Janney communications it is withholding.

The Discovery Deadline

The parties' current deadline to complete discovery is June 5, 2024. The parties are in the process of scheduling depositions of Penn National representatives, employees both current and former of Beacon Consulting Group, Inc. and Wiss Janney soon thereafter.

The Parties' Efforts to Confer

The parties have conferred regarding these discovery issues on several occasions over the phone, Zoom conference, and via email, including most recently on April 17, 2024. Penn National has taken the position that third parties Beacon and Wiss Janney were purported "litigation consultants" for Penn National and has tried to shield their communications with Bautech and Penn National—despite Beacon's and Wiss Janney's active involvement on the project as engineers and project managers and Wiss Janney being a testifying expert whose communications are discoverable. As of the filing of this Notice, Penn National has not produced a privilege log identifying any Beacon and Wiss Janney communications being withheld. However, the parties have discussed Beacon and Wiss Janney's involvement for different time periods on the project, and Resolve Equipment strongly disagrees with Penn National's characterization that Beacon and Wiss Janney acted as "litigation consultants" during the key time periods during the project and closing out the project.

Dates of Availability

Resolve Equipment's counsel, Penn National's counsel, and all other counsel are available at any time on either May 2, 9, or 10.

Time Needed for Hearing

The parties anticipate needing one hour for a hearing regarding this discovery dispute.

CERTIFICATE OF GOOD FAITH EFFORT TO CONFER

I HEREBY CERTIFY that undersigned counsel for the moving party has conferred with opposing counsel on all issues raised in this Notice of Discovery Dispute and confirmed opposing counsel's availability on the proposed dates.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of April, 2024, that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List via electronic mail transmission.

Respectfully submitted,

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